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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/650,339	08/28/2000	David A. Epstein	0942.4630001/RWE/BJD	8261

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EXAMINER

MARX, IRENE

ART UNIT PAPER NUMBER

1651

DATE MAILED: 09/26/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**Application No.  
**09/650,339**Applicant(s)  
**Epstein et al.**Examiner  
**Irene Marx**Art Unit  
**1651**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Aug 30, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Aug 30, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see NOTE below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment

3. ☒ Applicant's reply has overcome the following rejection(s):  
102(b) over Murat on claim 54.

4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attachment

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none

Claim(s) objected to: none

Claim(s) rejected: 1-4, 8-12, 14-18, 20-27, 31-35, 37, 54, 55, 60, and 61

Claim(s) withdrawn from consideration: 5-7, 13, 28-30, 36, 48-53, and 56-59

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

10. ☐ Other:

**IRENE MARX**  
**PRIMARY EXAMINER**  
**ART UNIT 1651**

Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the amendment to claim 4, to add "derivatives"

The addition of the term "carrier" in claim 44 raises new issues that would require further consideration and/or search regarding the interpretation of the term, for example. There is a clear discrepancy between applicants' intention to encompass "a box, carton, tube, ampules, bottles, pouches, envelopes, and the like", and the usual interpretation of "carrier" in this context to encompass materials such as water, calcium carbonate, alginate and CMC, for example.

***Response to Arguments***

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

In argument, Applicants indicate that the addition of "derivative" in claim 4 is to correct an "obvious typographical error". In response, it is noted that this "error", is not clearly apparent because the language of claim 4 is that of the original claim 4 and does not clearly constitute an "obvious typographical error".

Applicant's extensive arguments directed to the new matter rejection have been considered. However, they are not persuasive of error in the rejection. There is nothing in the present record to demonstrate that applicants intended to exclude citrate from the invention. Even though none of the examples shows the inclusion of citrate, the claims are not limited to the metal binding compounds listed according to the arguments at page 7, last paragraph of the response. The "evidence" now asserted to demonstrate that "citrate was intentionally considered but not included by the inventors as a metal binding compound for use with the present invention" is not probative of error in the rejection (Response, page 8, paragraph 1).

Applicants' arguments regarding the inadvertent inclusion of claim 54 in the rejection over Murad are well taken. The rejection should have been on claims 44-47, 60 and 61 only.

The remaining arguments are directed to claims that are not entered and are not persuasive of error in the rejections of record.

Therefore the rejections are deemed proper and are adhered to.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is before final (703) 872-9306 and after final, (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.

  
Irene Marx  
Primary Examiner  
Art Unit 1651